

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRAVELERS PERSONAL
INSURANCE COMPANY

vs.

NO. 08-CV-01013

JUL 22 2008

JAMES MONICO, JR.

O'NEILL, J.

JULY 22, 2008

MEMORANDUM

Before me are cross motions for summary judgment.

Monico asserts that while driving on Roosevelt Boulevard on December 8, 2004, a truck cut in front of him, that he successfully applied his brakes to avoid a collision with the truck and was then rear-ended by a vehicle driven by Alejandro Rivera. He alleges that the truck ran and did not stop. It is not disputed that Monico suffered bodily injury.

Monico settled his claim against Rivera for \$45,000.00. Travelers asserts that the Rivera vehicle possessed \$250,000.00 insurance coverage. Monico now wishes to pursue a claim against Travelers, his own insurance company, under the uninsured motorist provision of his policy. He concedes that if he is successful Travelers may offset the \$45,000 settlement against the award.

Travelers asserts that Monico is required to proceed only under the underinsured motorist provision of the policy which would enable it to offset the total Rivera coverage of \$250,000.00 against any award. In my view this assertion is totally without merit.

ENTERED

JUL 22 2008

CLERK OF COURT

Monico is asserting a claim against Travelers arising from his claim against the hit-and-run truck which he alleges caused the accident. The truck clearly falls within the policy's definition of an uninsured motorist vehicle, which is: "a motor vehicle...of any type... which is a hit-and-run vehicle whose operator and owner cannot be identified and which hits or causes any accident resulting in 'bodily injury' without hitting... if [as here] there is no contact with the hit-and-run vehicle, the facts of the accident must be proved."

Defendant's motion will be GRANTED and plaintiff's motion will be DENIED.

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ORDER

AND NOW, this 22nd day of July, 2008, defendant's motion for summary judgment is GRANTED and plaintiff's motion for summary judgment is DENIED. Judgment is entered in favor of defendant James Monico, Jr., and against plaintiff Travelers Personal Insurance Company.


THOMAS N. O'NEILL, JR., J.